WALTER R. BENOIT

IBLA 81-540 Decided March 1, 1982

Appeal from a decision of the Nevada State Director, Bureau of Land Management, denying a protest of wilderness study area designations. 8500 (N-932.6).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

APPEARANCES: Walter R. Benoit, pro se; Dale D. Goble Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Walter R. Benoit appeals from a decision of the Nevada State Director, Bureau of Land Management (BLM), dated March 2, 1981, denying his protest of the designation of 23 inventory units as wilderness study areas (WSA's). 1/ A list of those inventory units within Nevada so designated was published in the Federal Register on November 7, 1980, 45 FR 74070.

The State Director's designation of these lands as WSA's was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the Nevada State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement of WSA designations marks the end of the inventory phase of the review process and the beginning of the study phase.

1/ These units are: NV-010-035, 151; NV-020-007, 406, 600, 621; NV-030-102, 104, 108, 110, 127, 525A; NV-040-015, 086, 154, 166, 197, 242; NV-050-338, 354, 355; NV-060-190, 428.

Though some 23 WSA designations were protested by appellant and are at issue in the instant appeal, appellant offers on appeal specific comments and arguments as to only four of these areas: NV-030-102 (Clan Alpine Mountains); NV-030-104 (Stillwater Range); NV-030-110 (Desatoya Mountains); and NV-030-127 (Job Peak). These areas, appellant argues, are riddled with roads that BLM has eliminated by its practice of cherrystemming. By this practice, BLM draws the boundaries of an inventory unit around a road or other intrusion so as to exclude it from the area considered for wilderness values.

[1] In appellant's view, cherrystemming violates the intent if not the letter of FLPMA, because cherrystemmed roads decrease the opportunities for solitude within the WSA and leave the area in a roaded and unnatural condition. BLM's practice of cherrystemming has been the subject of prior appeals before this Board. In National Outdoor Coalition, 59 IBLA 291 (1981), we held that BLM had not acted contrary to law or any established Department policy in recognizing nonwilderness corridors (cherrystems) occupied by roads or other manmade intrusions. Though the boundaries of a WSA "containing" such intrusions might be highly irregular as a result of such cherrystemming, we noted that FLPMA did not specify any particular shape for an area which may eventually be recommended for inclusion in the National Wilderness Preservation System. Nothing contained in appellant's statement of reasons compels a different result.

Benoit's second argument on appeal is closely related to his objections with cherrystemming. In the Clan Alpine and Stillwater Range WSA's, there exist mining districts that appellant describes as heavily scarred and roaded. BLM acknowledges the presence of these mining districts, but maintains that the physical evidence of past and present mining is evaluated in determining whether such areas possess wilderness characteristics. Five active mines have been excluded by BLM from the Clan Alpine WSA, three of which are located at the end of recognized roads. Both the mines and roads have been cherrystemmed from the WSA. BLM excluded the remaining two active mines by removing a large area around the mining operation from the WSA. Two active mines have been removed from the Stillwater Range WSA. Benoit's contention is that mining operations, whether past or present, located just outside WSA boundaries nevertheless affect the naturalness and potential for solitude of lands within the WSA.

[2] In response to a similar argument in appellant's protest, the State Director found that the sights and sounds of mining operations outside the WSA were not so extremely imposing as to adversely affect wilderness characteristics, such as naturalness and solitude, within the WSA. Further consideration of the impacts of mining operations outside a WSA was deferred to the study phase.

BLM's approach here to the problem of sights and sounds outside WSA boundaries is generally consistent with the policies set forth in the Wilderness Inventory Handbook and Organic Act Directive (OAD) 78-61, Change 3

(July 12, 1979). In Ruskin Lines, 61 IBLA 193 (1982), we applied the policy enunciated in OAD 78-61, Change 3, at 4.

> Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

Appellant has not demonstrated error in BLM's decision to defer further consideration of sights and sounds outside WSA boundaries to the study phase. More than simple disagreement with BLM's determination is required to reverse BLM's action or to place a factual matter at issue. Sierra Club, 58 IBLA 159 (1981). Our affirmance of BLM's protest response postpones further consideration of mining impacts to the study phase of the wilderness review process. During the study phase, WSA boundaries may be adjusted in recognition of intrusive outside sights and sounds. Appellant's participation in the study phase is invited. 45 FR 75574, 75575, (Nov. 14, 1980).

Appellant's argument with respect to the remaining 19 WSA's on appeal does not merit detailed consideration. Appellant charges BLM with extreme bias, because the acreage of 22 inventory units, recommended as WSA's in April 1980, was increased as a result of public comments, while only 9 units, similarly recommended, decreased in size. Bias is further charged by the allegation that 11 areas that were not recommended as WSA's in April 1980 were designated as WSA's following public comment. Assuming the facts as stated by appellant, we have held in other contexts that in order to sustain a charge of bias, a substantial showing of personal bias must be shown. An assumption that an individual might be predisposed to a particular position is not enough. Marquette Cement Manufacturing Co. v. Federal Trade Commission, 147 F.2d 589, 592 (7th Cir. 1945); United States v. Leroy S. Johnson, 39 IBLA 337 (1979).

Appellant's argument on appeal does not convince us that BLM is biased in favor of wilderness preservation. The Federal Register notice of April 1, 1980, setting forth BLM's recommendations for WSA's, states that 11,416,471 acres out of the 14,379,969 acres undergoing intensive inventory were recommended by BLM to be dropped from wilderness consideration. 45 FR 21356. Furthermore, appellant's comments, prepared in response to this April 1 notice, were acknowledged by BLM to be instrumental in its dropping 18,000 acres from the Stillwater Range unit. Appellant provided BLM with substantial information on this unit and three others discussed above. His charge of bias is no substitute for the detailed comments, photographs, and maps which he was able to assemble for these units. As mentioned above, appellant's participation during the study phase is invited. His further comments and documentation during the study will do more to advance his cause than broadside charges of bias.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Bernard V. Parrette
Chief Administrative Judge

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Douglas E. Henriques
Administrative Judge